

U.S. Patent Application No. 10/020,861

REMARKS

Claims 1-6, 9-10, and 12-24 are pending in this Application. By this amendment claims 5, 10, 12, 16, 18 and 19 are amended.

Claim 5 is amended to recite "a container door ... comprising two door walls" in place of "a container door ... comprising two parallel door walls" and to delete "each said plate pivotally connected to a common drive in the form of a rotatable disk by a connecting rod, each said plate fixed in the moved-in end position and the moved-out end position by one of said connecting rods."

Claim 10 is amended to recite "further comprising a plurality of connecting rods" and to then recite "connecting rods" in place of "displacing elements" and to recite "plate" in place of "disk."

Claims 12, 16, 18, and 19 are amended to recite "a pair of door walls" in place of "a pair of parallel door walls."

No new matter has been added by the amendments to the pending claims and reconsideration and allowance of all pending claims are earnestly solicited.

Recapture

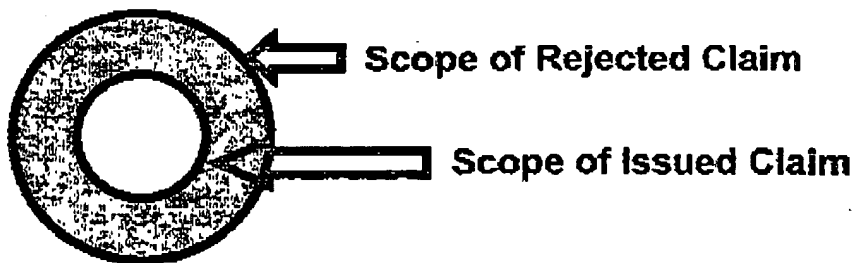
The Office Action of 8 September 2003 asserted that "parallel door walls" was recapture and that this limitation was required to be present in all pending claims. Applicant respectfully disagrees with this assertion and has amended the pending independent claims to no longer recite this limitation. The foregoing limitation was added to claim 1 in an amendment filed 21 June 1999. The next response from the Examiner was a notice of allowance mailed 19 July 1999. An examiner has never had the opportunity to determine whether a claim falling within the scope between the claims of the office action previous to the 21 June 1999 amendment and the 21 June

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1999 amendment was patentable. Therefore, the limitation "parallel door walls" is not subject to the recapture rule.<sup>1</sup> The 8 September 2003 Office Action also asserted "wherein all plates share a common drive in form of a rotatable disk driven by a motor" as subject to the recapture rule. The foregoing limitation was also added by the 21 June 1999 amendment. Hence and for the reasons stated with respect to the previous limitation, this limitation is not subject to the recapture rule.

Additionally Applicants maintain that the pending claims are allowable over the prior art without reciting the foregoing limitations. The pending independent claims, as amended, are submitted to be patentable over U.S. Patent 4,995,430 ("Bonora"). Bonora, for example, fails to

<sup>1</sup> See Ex parte Eggert, 67 USPQ2d 1716, 1717 (Bd. Pat. App. & Inter 2003) ("The changing scope of a claim during the administrative examination process as it is amended to overcome prior art rejections can be viewed as a series of concentric circles. As illustrated in Drawing 1 [see below], the scope of rejected claim 1 (once amended) is the outer circle and the scope of amended issued claim 1 (twice amended) is the inner circle. The shaded area between the circles represents subject matter which is only narrower than the scope of the rejected claim but only broader than the scope of the issued claim. In our view, the surrendered subject matter is the outer circle of Drawing 1 because it is the subject matter appellants conceded was unpatentable. The subject matter of the shaded area was not subject to the administrative examination process as the examiner was never directly presented with a claim which fell within the scope of the shaded area. Thus, appellants have never conceded that a claim falling within the scope of the shaded area of Drawing 1 is unpatentable and therefore, in our view, such subject matter is not barred by the recapture rule.") (emphasis added).



**Drawing 1**

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disclose or suggest structure capable of penetrating a plurality of recesses in a container along a "curved path," as recited in the pending independent claims.

#### Reissue Applications

The Office Action alleged the reissue oath/declaration to be defective. A Supplemental Reissue Declaration is filed herewith and, to the extent the Office Action stated an objection or rejection, reconsideration and withdrawal is respectfully requested.

Claims 5, 6, 9, 10, and 12-24 are rejected under 35 U.S.C. § 251 as based upon a defective reissue declaration. In view of the attached reissue declaration, reconsideration and withdrawal of the rejection are respectfully requested.

Applicants acknowledge the statement in the Office Action that the original patent or a statement as to loss or inaccessibility of the original patent must be received before this reissue application can be allowed. Either the original patent or a statement as to loss or inaccessibility of the original patent will be provided upon an indication that the pending claims are in condition for allowance.

#### Allowable Subject Matter

Applicants acknowledge that claims 1-4 are allowed.

#### Conclusion

In view of the amendments to the Claims, Applicants believe that this Application is now in condition for allowance. If the Examiner feels that contacting the Applicants' Attorney via

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telephone would advance the prosecution of this case, the Examiner is invited to call the undersigned at the number given below.

Respectfully submitted,



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